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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,841	12/03/2004	Johnny Farm	P/1228-188	7216
2352	7590	02/13/2006	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			TORRES, MELANIE	
			ART UNIT	PAPER NUMBER
			3683	

DATE MAILED: 02/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,841	<b>Applicant(s)</b> FARM, JOHNNY	
	<b>Examiner</b> Melanie Torres	<b>Art Unit</b> 3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-13 is/are rejected.  
7) ☒ Claim(s) 14 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jonsson (or Jonsson '835) in view of Braschler et al.

Jonsson teaches a hydrodynamic brake comprising a stator comprising an annular stator shell (10) with a multiplicity of stator blades in and arrayed around the stator shell, a rotor (12) with a corresponding annular rotor shell with a multiplicity of rotor blades in and arrayed around the rotor shell, the annular stator and rotor shells are so shaped and arranged that they form a toroidal space with the stator and the rotor blades in the space whereby a medium is supplied to the toroidal space effects a braking action on the rotor, the space having a first inlet (26) and having an outlet (28), a storage space for a medium which is intended to be supplied to the toroidal space, a first pipe circuit for transferring the medium from the outlet from the toroidal space to the first inlet to the toroidal space. However, Jonsson does not teach a second inlet and a second pipe circuit transferring the medium from the storage space via the second inlet which is arranged separately relative to the first inlet in the first pipe circuit. Braschler et al. teaches a second inlet (65) and a second pipe circuit transferring the medium from the storage space via the second inlet which is arranged separately relative to the first

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inlet in the first pipe circuit. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the second inlet circuit of Braschler et al. in the brake of Jonsson since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Re claims 7 and 8, Jonsson as modified does not teach a gear pump in the second pipe circuit. The examiner takes official notice that pumps are well known for their use in hydrodynamic brakes for facilitating fluid movement through the system. Further, applicant has not disclosed that specifically using a gear pump solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a variety of well known pumps.

#### ***Allowable Subject Matter***

3. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

4. Applicant's arguments filed November 22, 2005 have been fully considered but they are not persuasive.

Applicant argues that the prior art reference Jonsson is not prior art since it is commonly owned with the present application. However, Applicant has not filed the necessary affidavit or declaration to overcome this reference. (MPEP 715.01 (b)) Additionally, the Jonsson reference claims priority to WO 02/04835 and Applicant acknowledges that this reference cannot be overcome with an affidavit or declaration.

Applicant argues that the prior art of record does not teach the claimed combination. However, it is the examiner's position that the combination as claimed is nothing more than a redundancy of known arrangements.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., pumps, benefits of the instant invention) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Further, Braschler et al. is relied upon as a teaching of merely a second inlet. Applicant argues that Braschler et al. do not teach a second pipe circuit coupled between the storage space and the second inlet because all the oil is received from the same supply behind the stator. However, a "second flow path" would be inherently necessary if there was a second inlet when considering the combination above. It appears that Applicant is arguing the references individually. One cannot show nonobviousness by attacking references individually where the rejections are based on

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combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Torres whose telephone number is (571)272-7127. The examiner can normally be reached on Monday-Friday, 6:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan can be reached on (571)272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MT

February 5, 2006

*Melanie Torres*  
Melanie Torres  
Primary Examiner  
2-5-06